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Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) CR No. 12-00560-JFW  
)  
Plaintiff, ) GOVERNMENT'S EX PARTE  
) APPLICATION FOR AN ORDER  
v. ) ALLOWING DISCLOSURE OF GRAND  
) JURY TESTIMONY; MEMORANDUM OF  
G&A CHECK CASHING, ) POINTS AND AUTHORITIES;  
) DECLARATION OF AUSA DAVID L.  
Defendant. ) KIRMAN; [PROPOSED] ORDER

Trial Date: October 23, 2012  
Time: 8:30 a.m.  
Place: Courtroom of the Hon.  
John F. Walter

1 Plaintiff, United States of America, by and through its  
2 counsel of record, the United States Attorney for the Central  
3 District of California, hereby applies ex parte for an order  
4 pursuant to Rule 6(e)(3)(E)(i) of the Federal Rules of Criminal  
5 Procedure, authorizing the government to provide defendants'  
6 counsel of record with a copy of the grand jury testimony of a  
7 witness whom the government may call at trial.

8 The government makes this application because of defendants'  
9 need to prepare their case and the disclosure requirements of the  
10 Jencks Act, 18 U.S.C. § 3500. This application is based on the  
11 attached Memorandum of Points and Authorities and Declaration of  
12 David L. Kirman, the files and records of this case, and such  
13 further evidence and argument as may be presented at any hearing  
14 on this application.

15 Dated: August 27, 2012

Respectfully submitted,

16 ANDRÉ BIROTTE JR.  
United States Attorney

17 ROBERT E. DUGDALE  
18 Assistant United States Attorney  
19 Chief, Criminal Division

20 \_\_\_\_\_/s/  
21 MATTHEW HASLINGER  
22 Trial Attorney  
23 Asset Forfeiture and Money  
24 Laundering Section  
25 U.S. Department of Justice

26 \_\_\_\_\_/s/  
27 DAVID L. KIRMAN  
28 Assistant United States Attorney  
Major Frauds Section

1                    MEMORANDUM OF POINTS AND AUTHORITIES

2            Federal Rule of Criminal Procedure 6(e)(2)(B) provides in  
3 relevant part: "Unless these rules provide otherwise, the  
4 following persons must not disclose a matter occurring before the  
5 grand jury: . . . (vi) an attorney for the government . . . ."  
6 Fed. R. Crim. 6(e)(2)(B). Rule 6(e)(3)(E) provides in relevant  
7 part: "The court may authorize disclosure -- at a time, in a  
8 manner, and subject to any other conditions that it directs -- of  
9 a grand-jury matter: (i) preliminarily to or in connection with  
10 a judicial proceeding . . . ." Fed. R. Crim. 6(e)(3)(E).

11            A trial court has "substantial discretion to order or deny  
12 release" of a grand jury transcript. United States v. Evans &  
13 Associates Construction Co., 839 F.2d 656, 658 (9th Cir. 1988).  
14 The starting point for the Court's analysis is the "long-  
15 established policy that maintains the secrecy of the grand jury  
16 proceedings in the federal courts." Id. (citation omitted). The  
17 Supreme Court has established five policy reasons for maintaining  
18 the secrecy of grand jury proceedings:

19            (1) to prevent the escape of those whose indictment may  
20 be contemplated; (2) to insure the utmost freedom to  
21 the grand jury in its deliberations, and to prevent  
22 persons subject to indictment or their friends from  
23 importuning the grand jurors; (3) to prevent  
24 subornation of perjury or tampering with the witnesses  
25 who may testify before [the] grand jury and later  
26 appear at the trial of those indicted by it; (4) to  
27 encourage free and untrammelled disclosures by persons  
28 who have information with respect to the commission of

1 crimes; [and] (5) to protect [an] innocent accused who  
2 is exonerated from disclosure of the fact that he has  
3 been under investigation, and from the expense of  
4 standing trial where there was no probability of guilt.  
5 United States v. Procter & Gamble Co., 356 U.S. 677, 681, n.6  
6 (1958) (internal quotations omitted); see also United States v.  
7 Dynavac, Inc., 6 F.3d 1407, 1411 (9th Cir. 1993) (citing Procter  
8 & Gamble, and Douglas Oil Co. of Calif. v. Petrol Stops  
9 Northwest, 441 U.S. 211, 219 (1979), for the same proposition).  
10 In United States Industries, Inc. v. United States District  
11 Court, the Ninth Circuit reasoned that a determination of whether  
12 disclosure of grand jury material should be made under Rule 6(e)  
13 depends on the need of the party seeking disclosure and on the  
14 "policy considerations for grand jury secrecy as they apply to  
15 the request for disclosure under consideration." 345 F.2d 18, 21  
16 (9th Cir. 1965). The court held: "[I]f the reasons for  
17 maintaining secrecy do not apply at all in a given situation, or  
18 apply to only an insignificant degree, the party seeking the  
19 disclosures should not be required to demonstrate a large  
20 compelling need." Id.

21 In this instance, the policy considerations requiring  
22 secrecy are inapplicable with respect to those witnesses who will  
23 testify at trial because the case has been indicted. See  
24 Dynavac, 6 F.3d at 1412 ("When the grand jury investigation is  
25 already terminated and an indictment has been issued, only  
26 'institutional' concerns are implicated by the documentary  
27 disclosure.") (citation omitted). Moreover, disclosure of the  
28 grand jury testimony to defense counsel, would be in the interest

1 of justice and allow defense counsel material necessary to the  
2 defense in advance of trial.

3 For the foregoing reasons, the government respectfully  
4 requests that this Court issue an order authorizing the  
5 government to provide defense counsel with a copy of the grand  
6 jury testimony of a witness the government may call at trial.

7  
8 Dated: August 27, 2012

Respectfully submitted,

9 ANDRÉ BIROTTE JR.  
10 United States Attorney

11 ROBERT E. DUGDALE  
12 Assistant United States Attorney  
13 Chief, Criminal Division

14 /s/  
MATTHEW HASLINGER  
15 Trial Attorney  
16 Asset Forfeiture and Money  
Laundering Section  
U.S. Department of Justice

17 /s/  
18 DAVID L. KIRMAN  
19 Assistant United States Attorney  
20 Major Frauds Section  
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DECLARATION OF DAVID L. KIRMAN

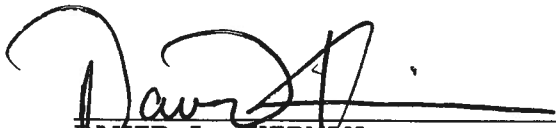
I, David L. Kirman, declare and state as follows:

1. I am an Assistant United States Attorney for the Central District of California and am assigned to the prosecution of United States v. G&A Check Cashing et al., CR No. 12-560-JFW. I make this declaration in support of the government's ex parte application for an order permitting disclosure of a grand jury transcript.

2. I expect that the Government may call at trial a witness who testified before the grand jury during the investigation of this case. Such testimony constitutes a statement under the Jencks Act, 18 U.S.C. § 3500, which the government is required to provide to the defendant.

3. On August 27, 2012, the Court held a status conference and ordered the government to file an ex parte application for release of grand jury testimony that day. No party raised an objection to the ex parte application at the hearing. At 3:10 p.m., I sent defense counsel an email asking them to notify me if they had any objections to the ex parte. Counsel for G&A notified me he has no objection to the application. As of the time of filing of the instant application, counsel for defendants Gasparian and Sanchez have not responded.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief. Executed on August 27, 2012, at Los Angeles, California.

  
DAVID L. KIRMAN